

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNOPPOSED MOTION TO SUBSTITUTE A PARTY

Pursuant to Rule 25(c) of the Federal Rules of Civil Procedure, Defendant Cypress Pharmaceutical, Inc. (“Cypress”) and Breckenridge Pharmaceutical, Inc. (“Breckenridge”) respectfully move the Court for an Order substituting Breckenridge for Cypress for the reasons set forth below.

1. On or about September 11, 2013, Cypress and Breckenridge entered into an Asset Purchase Agreement, whereby Breckenridge acquired all right, title, and interest to ANDA No. 204135, which is the subject of the Complaint filed by Plaintiff Braintree Laboratories, Inc. (“Braintree”) in the above-captioned case.

2. Breckenridge is, accordingly, the current and sole owner of ANDA No. 204135 and should be substituted for Cypress in the present action. Breckenridge does not contest the jurisdiction of the United States District Court for the Southern District of New York for the purposes of the present action.

3. Breckenridge agrees to be bound by the Procedural Stipulation entered on July 1, 2013 (D.I. 41). Breckenridge further agrees to be bound by the Stipulated Facts for Purposes of

Cypress' Motion for Summary Judgment of Noninfringement dated July 15, 2013 (*see* D.I. 51-11).

4. Braintree does not oppose this Motion but states that it has no knowledge of, and neither admits nor denies, the statements in paragraphs 1 and 2 above.

For these reasons, Cypress and Breckenridge respectfully request that the Court enter an Order in the form submitted herewith substituting Breckenridge for Cypress and deeming Breckenridge bound by the procedural and factual stipulations entered by Cypress in this action (D.I. 41 and D.I. 51-11).

Dated: October 15, 2013

Respectfully submitted,

/s/ Lisa N. Phillips
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Breckenridge Pharmaceutical, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2013, a true and correct copy of the foregoing **UNOPPOSED MOTION TO SUBSTITUTE A PARTY** was filed through the Court's Electronic Filing System (ECF), and was served electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Erik van Leeuwen

Erik van Leeuwen
Litigation Operations Manager
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